



## IMPOUNDING OR SEIZING ALL-TERRAIN VEHICLES AND DIRT BIKES

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### ISSUE

Does the law authorize municipalities to impound or seize all-terrain vehicles (ATV) or dirt bikes when fines for their misuse are not paid? Could the legislature enact a law authorizing municipalities to impound or seize ATVs or dirt bikes following third and subsequent violations of a municipal ordinance concerning their use without infringing on due process?

The Office of Legislative Research is not authorized to provide legal opinions, and this report should not be considered one.

### SUMMARY

The law does not specifically authorize municipalities to impound or seize ATVs or dirt bikes when fines for their misuse are not paid. Under current law, if an individual does not pay fines associated with ATV or dirt bike misuse, the municipality must ask the Superior Court to enter a civil money judgment ([CGS § 7-152c](#)). Having obtained a money judgment, municipalities may be able to attach and eventually seize ATVs or dirt bikes for failure to pay fines ([CGS § 52-350a](#) et seq.).

It appears that the legislature could authorize municipalities to impound or forfeit ATVs and dirt bikes owned by individuals who violate related municipal ordinances multiple times, provided there were sufficient procedural safeguards in place. Constitutional concerns could arise if, for example, (1) such a law did not provide notice and an opportunity to contest the forfeiture or (2) the seized item's value was excessive in relation to the offense. Connecticut courts analyze constitutional due process claims arising from a seizure under the three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under this test, a court must consider the:

1. private interest affected by the government action (e.g., loss of dirt bike);
2. risk of an erroneous deprivation through the procedures used, including the probable value of additional safeguards (e.g., whether the municipal hearing procedure protects due process rights); and
3. government's interest, including the burden additional safeguards would impose (e.g., confiscating dirt bikes when fines have not prevented repeat violations).

Some states authorize municipalities to seize property used to violate ordinances. For example, Wisconsin law specifies that municipalities may impound or forfeit radios and other sound-producing devices used to violate noise ordinances (Wis. Stat. § 66.0411 et seq.). Kentucky broadly authorizes forfeiture as a means to penalize ordinance violators, its law specifies that “[e]very city shall have the power to establish fines, penalties, and forfeitures that may be imposed for violation of its ordinances” (Ky. Rev. Stat. § 83A.065).

Existing Connecticut law authorizes the state to impound vehicles connected to certain crimes, including illegal road racing. The statutes also allow property connected to a crime to be seized during a lawful arrest or search and in some cases forfeited; a hearing must be held before its disposal. The forfeiture statutes (1) protect the property rights of certain interested individuals (e.g., lienholders who could not have reasonably known the property was used to commit a crime) and (2) describe when confiscated property is to be returned or disposed of.

In 2014, the legislature considered a bill authorizing municipalities to seize and then sell ATVs and dirt bikes used to commit third or subsequent municipal ordinance violations (HB 5141). The House passed the amended bill, but it was not voted on in the Senate. A summary of the bill is included below.

## **FINES FOR VIOLATION OF A MUNICIPAL ORDINANCE**

Current law authorizes municipalities with ordinances on ATV and dirt bike operation and use to set the penalty for violating such ordinances at no more than:

1. \$1,000 for the first violation,
2. \$1,500 for the second violation, and
3. \$2,000 for subsequent violations ([CGS §§ 14-390](#) and [CGS §§ 14-390](#)).

Fines must be assessed in compliance with a municipality’s citation hearing process, which requires giving the offender notice of the violation and an opportunity to contest it at a hearing ([CGS § 7-152c](#)). If fines are not paid, then the municipality

must file a copy of the notice of assessment with the Superior Court and the court's clerk must enter a judgment against the offender. This judgment has the effect of a money judgment, which means that if the offender does not satisfy the judgment, the municipality may be able to attach his or her nonexempt personal property (for example, an ATV or dirt bike) by filing a judgment lien certificate with the Secretary of the State. After obtaining a turnover order or execution from the court, municipalities may be able to seize and then sell an attached ATV or dirt bike ([CGS § 52-350a](#) et seq.).

## **EXISTING IMPOUNDMENT AND FORFEITURE LAWS**

Connecticut's statutes permit impoundment or forfeiture of personal property under certain circumstances. Below, two such statutes are summarized, one authorizing the impoundment of motor vehicles used for illegal road races and the other authorizing the forfeiture of property connected to criminal activity and deemed a nuisance.

### ***Illegal Road Racing***

A law allows a court to order the impoundment of a motor vehicle (i.e., "all vehicles used on the public highways") for up to 30 days if its registered owner is convicted of using it to engage in an illegal road race. Vehicles used in an illegal road race by an individual other than the registered owner cannot be impounded under this law. If a vehicle is impounded, the owner is responsible for any fees or costs associated with the impoundment ([CGS § 14-224](#); see [§ 14-212](#) for definition of motor vehicle).

It appears that this law extends to ATVs used for illegal road races, if the ATV is registered with the Department of Motor Vehicles (DMV). But it appears that dirt bikes cannot be impounded under this statute because they are not registered with DMV.

Other laws authorize the impoundment of vehicles if they were used to commit certain crimes. For example, the law authorizes a 48 hour impoundment for driving while intoxicated with a suspended or revoked license ([CGS § 14-227h](#)).

### ***Property Connected to a Criminal Offense***

If property has been seized in connection with a crime and the state claims that the property is a nuisance, it can petition the court to order the property's destruction or other disposition. Before the required hearing on the petition, the state must notify the owner and any other interested parties of the proceeding.

If the court determines that the property is a nuisance, it must generally order the property (1) destroyed; (2) turned over to a charitable, educational, or governmental institution; or (3) sold. But, property may not be destroyed or turned over if doing so would violate the rights of a lease or rent assignee or a mortgage, lien, or security interest holder. If a court orders property sold, the proceeds must first go toward paying off any mortgage, assigned lease or rent, or lien or security interest ([CGS § 54-33g](#)).

Other laws authorize the forfeiture of property connected to specific offenses, such as illegal drug sales or money laundering ([CGS § 54-36h](#)).

### **SUMMARY OF 2014 BILL (HB 5141, FILE NO. 683)**

In 2014 the legislature considered a bill that would have broadened the range of penalties a municipality could impose for multiple violations of an ordinance concerning the use of dirt bikes, ATVs, or snowmobiles. Under the bill (as amended by the House), following a third or subsequent ordinance violation, a municipality could seize the dirt bike, snowmobile, or ATV used to violate the ordinance. Like existing statutes authorizing seizure, the bill (1) prohibited property from being confiscated in violation of other individuals' property rights and (2) described how the seized property had to be disposed of. But, unlike existing seizure statutes, the bill did not specify the process by which an offender could contest the seizure. Presumably, as is the case with fines, the affected individual could contest it through the municipal citation hearing process.

Under the bill, a confiscated item would be forfeited to the municipality, subject to any bona fide lien, lease, or security interest. The bill specified that an owner or lienholder's interest in the confiscated property would not be forfeited due to someone else's act or omission, if the owner or lienholder did not know, and could not have reasonably known, that the dirt bike, ATV, or snowmobile was being used, or was intended to be used, to violate a municipal ordinance.

The bill required a municipality's chief executive officer to sell seized dirt bikes, ATVs, or snowmobiles at a public auction. Sale proceeds were to be given to the municipal treasurer for deposit into the municipality's general fund.

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